IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1008 OF 1988

1.Kundalik Dhonduji Dongare
2.Mohan Kundalik Dongare
3.Manohar Kundalik Dongare
4.Madhukar Kundalik Dongare
5.Sau.Lalita Vidyadhar Tamboli ...Appellants

Vs.

1.M/s.Shetty Travels, Prop.D.G.Khokarale
2.D.G.Khokarale
3.Polsan Ettara Vellamani
4.Sr.Divisional Manager,
New India Assurance Company
Bombay ...Respondents

WITH
FIRST APPEAL NO.1009 OF 1988

Kundalik Dhonduji Dongare ...Appellant

Vs.

1.M/s.Shetty Travels Prop.D.G.Khokarale
2.D.D.Khokarale
3.Polsan Ettora Vollamani(Appeal stands dismissed vide order dated 6-3-1990)
4.The Senior Divisional Manager
New India Assurance Company
Bombay ...Respondents

Mr.S.G.Surana for the Appellants in both the Appeals.
Mr.S.R.Singh for the Respondent No.4 in both the Appeals.

CORAM: A.S.OKA, J.
DATED: APRIL 19,2006.

ORAL JUDGMENT:

1. Heard Advocates for the parties. The Appeals are preferred by the claimants in a Claim under section 110 (A) of Motor Vehicles Act, 1939. The Appeals can be disposed of

by a common Judgment as both the claims arise out of the same accident.

2. First Appeal No.1008 of 1988 arises out of application No.426 of 1983 which was filed for claiming compensation on account of the death of one Anjanabai Dongare. The Appellants are the claimants. The Appellant No.1 is the husband of the deceased and Appellant Nos.2 to 4 are the children of the deceased. The Appellant No.1 in First Appeal No.1008 of 1988 is the sole Appellant in First Appeal No.1009 of 1988 who in the same accident suffered injuries and therefore he filed a claim for compensation.

3. The Appellant No.1 in First Appeal No.1008 of 1988 Kundalik Dongare was plying the motor cycle which was involved in the accident. His wife deceased Anjanabai was a pillion rider. According to the case of the said Kundalik, he was driving the motor cycle by the left side of the road. At that time a luxury bus owned by the Respondent No.1 dashed against the motor cycle. As a result of the impact of the accident Kundalik and his wife were thrown away from the motor cycle. Kundalik’s wife Anjanabai succumbed to the injuries.

4. The learned Member of the Tribunal held that the Appellant No.1 Kundalik contributed to the negligence to the

extent of 50%. The Tribunal also held that the Appellants were entitled to compensation of Rs.36,000/- on account of death of Anajanabai. As the finding of contributory negligence was recorded against the Appellant No.1, Award was made only in the sum of Rs.18,000/- with interest thereon at the rate of 12% p.m. from the date of the presentation of the claim application. So far as the claim made by the Appellant No.1 is concerned, after making necessary deduction on account of contributory negligence, he was awarded compensation of Rs.2,555/- along with interest thereon at the rate of 12% p.a.

5. Shri Surana appearing for the Appellants in both the Appeals submitted that the compensation awarded is on the lower side. He submitted that the multiplicand arrived by the tribunal is on the lower side. He submitted that the usual amount on account of loss of consortium has not been awarded by the Tribunal on account of death of Anjanabai. He submitted that the finding of contributory negligence recorded by the Tribunal is perverse. About the claim of Appellant No.1 he submitted that he was entitled to higher amount than what has been awarded by the Tribunal.

6. Shri Singh appearing for Respondent No.4 in both the Appeals has supported the impugned Judgment and Award. He submitted that no interference is called for as the amount of

compensation in both the cases is on the higher side.

7. I have considered the submissions. The learned Member of the Tribunal has found that the Appellant No.1 Kundalik has contributed to the accident by negligence on his part. The defence of the Respondent No.1 and 4 is that the said Kundalik suddenly stopped his motor cycle as he wanted to talk to someone who was sitting in an Ambassador car. The defence is that the said motor cycle was stopped abruptly. The driver of the luxury bus which was following the motor cycle could not suddenly control his bus and could not stop the bus by applying brakes. The Tribunal has referred to the evidence of Witness No.5 examined by the Applicant by name Ratilal Amrutlal Gandhi. The said witness was sitting in the Ambassador car. The learned Member of the Tribunal after considering the oral evidence on record accepted the case that the said Kundalik stopped the motor cycle abruptly and suddenly. The learned Member also held that the driver of the luxury bus had an opportunity to avoid the accident but he failed to avoid the accident. The learned Member held that the bus could have been taken ahead by overtaking the motor cycle. After having considered the oral evidence on record and Memorandum of spot panchnama, I find no error in the view taken by the learned Member of the Tribunal when he held that the said Kundalik had contributed by his negligence to the accident to the extent of 50%.

8. This takes me to the quantum of compensation. The test adopted by the learned Judge for quantifying the amount of compensation is that he has taken into account the monthly expenditure incurred by the Appellants by employing a servant for the household work. The learned Member of the Tribunal has observed that "the Applicant No.1 Kundalik did not give any details that as to how much he has spent for getting the substitute service by loosing his wife." This part of the Judgment is not at all happily worded. The learned Member should have refrained from stating what he has stated as above.

9. The learned Member has adopted the test laid down by the decision of the Apex Court reported in A.I.R. 1985 Punjab and Haryana page 126. Even going by the test adopted by the learned Member, he has taken monthly expenditure of only Rs.150/- into account. By taking monthly expenditure as Rs.150/- p.m. he has capitalised the amount by taking multiplier of 20 years. The Appellant No.1 Kundalik has deposed that he was possessing 35 acres of land and his deceased wife was actively helping him in cultivation of the land. He has stated that the deceased was looking after the domestic work and welfare of the children. Some material is placed on record in the form of 7/12 extracts to show that the Appellant No.1 was possessing 35 acres of land. His case

is that due to exigencies of his business he was required to stay at Mumbai and wife was staying at native place where the agricultural land is situated. There was no reason to discard the case made out by the Appellant No.1 that his wife was looking after the agricultural operations in the land possessed by the Appellant No.1. In the matter of calculation of compensation in case of a fatal accident, some element of guess work is bound to be there. Considering the material on record, monthly loss ought to have been quantified at Rs.200/- p.m. and by applying multiplier of 20 the total amount comes to Rs.48,000/- . The Apex Court has held in case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Susamma Thomas and others reported in (1994) 2 S.C.C. 176 that the conventional amount on account of loss of consortium etc. is Rs.15,000/-. However, in the present case we are dealing with the claim filed in the year 1989. In my view the amount on the said account can be reasonably taken to be Rs.12,000/-. The total compensation payable is Rs.60,000/-. After deducting 50% on account of contributory negligence, the compensation amount will be 30,000/- in stead of Rs.18,000/-. The learned Member of the Tribunal has committed an error by directing that the Opponent No.4-Insurance Company will pay compensation only if the other Opponents fail to pay the compensation. The said direction will have to be modified.

10. In so far as First Appeal No.1009/1988 is concerned it arises out of the claim for compensation on account of the injuries sustained by the Appellant-Kundalik in the same accident. The medical certificates on record at Exh. 52 to 63 show that the injuries received by the said Kundalik are all in the nature of abrasions and none of the injuries are of serious nature. The learned Member of the Tribunal observed that the said Kundalik had an abrasion over right elbow and on the right temparoparietal region. For such injuries which are reflected from the medical certificates, the Tribunal awarded general damages of Rs.5,000/- and a sum of Rs.110/- on account of medical expenses. Deduction of 50% was made on account of contributory negligence. Considering the nature of injuries, the general damages awarded by the Tribunal are reasonable and proper. No case is made out for interference so far as said award is concerned.

11. Hence, I pass the following order :

FIRST APPEAL NO.1008 OF 1988

i) Appeal is partly allowed. The operative part of the Award made in M.A.C.No.426 of 1983 is modified and the same will read as under :

. "Opponent Nos.1 to 4 shall jointly and severally pay to the Applicants a sum of Rs.30,000/- with interest thereon at the rate of 12% p.a. from the date of filing the claim application till the realisation of the amount. The Applicants will be entitled to proportionate costs of the claim application."

ii) The Respondents herein will pay proportionate costs of this Appeal to the Appellants.

iii) Time of four months is granted to the Respondents to comply with this order.

FIRST APPEAL NO.1009 OF 1988

. Appeal is dismissed with no order as to costs.

Judge.